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Amendment
Attorney Docket No. E30.2H-11235-US01

Remarks

This amendment is being filed in response to the Office Action mailed March 28, 2005. Original claims 1 through 14 have been cancelled and new claims 15 through 28 have been added herein. Applicant respectfully requests reconsideration and allowance of claims 15 through 28 herein.

In the office action of March 28, 2005 the Examiner rejected claims 1-4 as being anticipated under 35 U.S.C. §102(e) by Pederson '459. The Examiner asserted that Pederson '459 taught "LED (30) mounting surfaces, the LED mounting surfaces extending upwardly from the base 20." (Fig. 3)

With respect to 35 U.S.C. §102, the Federal Circuit has held that prior art is anticipatory only if every element of the claimed invention is disclosed in a single item of prior art in the form literally defined in the claim. *Jamesbury Corp. v. Litton Indus. Products*, 756 F.2d 1556, 225 U.S.P.Q. 253 (Fed. Cir. 1985); *Atlas Power Co. v. E.I. DuPont DeNemours*, 750 F.2d 1569, 24 U.S.P.Q. 409 (Fed. Cir. 1984); *American Hospital Supply v. Travenol Labs.*, 745 F.2d 1, 223 U.S.P.Q. 577 (Fed. Cir. 1984).

Initially, the only Figures which arguably disclose a pod illumination device in the Pederson '459 reference are disclosed in Figures 47, 63, 64, and 65. The Pederson '459 reference, Figure 3, as relied upon by the Examiner, does not teach a pod illumination device. In addition, the alleged base 20 of Figure 3 of the '459 reference **extends upwardly**, where the LED's extend outwardly or horizontally outwardly with respect to the base. Figure 3 of the Pederson '459 reference does not teach a plurality of **LED mounts** or a plurality of **LED mounts extending upwardly from a base**.

The claims of the instant application do not claim an upward base. The Pederson '459 reference does not teach the element of an LED mount or the LED mount extending upwardly relative to the base. The rejection of claims in the instant application over Figure 3 of the Pederson '459 reference pursuant to 35 U.S.C. §102(e) was therefore improper.

The Examiner next rejected claim 5 pursuant to 35 U.S.C. §103(a) alleging that claim 5 was un-patentable over Pederson '459 in view of Fore '279.

Under 35 USC §103(c), Pederson '459 can not be used as prior art because, as conspicuously stated below, the rejected claimed invention of the present application and

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Pederson '459 were owned by the same entity or subject to an obligation of assignment to the same entity at the time of invention.

Common Ownership Statement Under §103(c)

The inventions defined by claims 1 through 14 and new claims 15 through 28 and Pederson (US 6,814,459 B2) were, at the time the invention defined in the cited claims was made, owned by or subject to an obligation of assignment to the same entity.

The Examiner's rejection pursuant to 35 U.S.C §103 was therefore improper.

Applicant respectively asserts that the Pederson '459 reference may not be used individually, or in combination with any other reference or prior art, to reject Applicant's claims herein pursuant to 35 U.S.C. §103. Applicant respectfully asserts that Applicants claims as presented herein are patentable in view of the Fore '279 reference, and patentable in view of all of the other prior art of record in this application. Reconsideration of Applicant's claims herein is earnestly requested.

Formalities

If an extension of time is required to make this response timely and no separate petition is enclosed, Applicant hereby petitions for an extension of time sufficient to make the response timely. In the event that this response requires the payment of government fees and payment is not enclosed, please charge Deposit Account No. 22-0350.

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Conclusion


It is believed that new claims 15-28 are in condition for allowance in view of the foregoing. Applicant respectfully requests reconsideration of the claims herein and that the claims be allowed. The Applicant respectfully requests that the Examiner enter the amendment which Applicant believes puts the application in condition for allowance. Early action to that effect is earnestly solicited.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

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By: _____


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